

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File Nos. 0002864440, 0002919013
NETWORK, INC.)	
)	
Consolidated Petition to Deny Filed by the City of)	
El Segundo, California)	
)	
Request for Enforcement Action and License)	
Modification for WQAD318, City of El Segundo,)	
Due to Non-Construction and Non-Operation)	

ORDER ON RECONSIDERATION

Adopted: April 4, 2008

Released: April 7, 2008

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we address a petition (Petition)¹ filed on July 19, 2007 by National Science and Technology Network, Inc. (NSTN) for reconsideration of a June 27, 2007 *Order*.² The *Order*³ granted a petition filed by the City of El Segundo (El Segundo) to deny NSTN's above-captioned applications for authority to operate new trunked Industrial/Business Pool stations on, *inter alia*, frequency pairs 472/475.5250 MHz at Corona, California,⁴ and 471/474.3500 MHz at Rancho Palos Verdes and Glendale, California.⁵ We also address NSTN's July 24, 2007 Request for Enforcement Action and License Modification for WQAD318, City of El Segundo, Due to Non-Construction and Non-Operation (Request for Enforcement Action).⁶ For the reasons stated below, we deny both the Petition and the Request for Enforcement Action.

2. *Background.* NSTN's applications sought authority to operate on 12.5 kHz "offset" channels in the 470-512 MHz band. El Segundo objected to NSTN's applications, asserting that NSTN's proposed operations would not provide the required interference protection to El Segundo's operations on frequency pairs 471/474.3375 MHz and 472/475.5375 MHz under Call Sign WQAD318. Specifically, El Segundo asserted that the applications did not satisfy the interference protection criteria of TIA/EIA/TSB-

¹ Petition for Partial Reconsideration (filed July 19, 2007) (Petition).

² National Science and Technology Network, Inc., *Order*, 22 FCC Rcd 11538 (WTB MD 2007) (*Order*).

³ *Id.* at 11540 ¶ 6.

⁴ FCC File No. 0002864440 (filed Dec. 29, 2006).

⁵ FCC File No. 0002919013 (filed Feb. 20, 2007).

⁶ Letter dated July 18, 2007 from Alan M. Lurya, Esq., counsel for NSTN, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, and Catherine Deaton, District Director, Western Region, Enforcement Bureau (filed July 24, 2007) (Request for Enforcement Action). NSTN filed a "First Status Report to Commission on Investigation of El Segundo's Failure to Construct and Operate Certain Locations" (First Status Report) on October 11, 2007, and a "Second Status Report to Commission on Investigation of El Segundo's Failure to Construct and Operate Certain Location and Supplement to Request for Commission Action" (Second Status Report) on November 28, 2007.

88 (TSB-88).⁷ The *Order* concluded that a TSB-88 analysis was required because there was spectral overlap between El Segundo's licensed operations and NSTN's proposed operations, and that NSTN's proposed operations did not satisfy the TSB-88 criteria.⁸ The *Order* also rejected NSTN's contention, for which NSTN offered no documentation or support, that Station WQAD318 was not entitled to protection because the facilities were not timely constructed.⁹

3. On July 19, 2007, NSTN filed the instant Petition.¹⁰ NSTN disputes the *Order*'s conclusion that there is spectral overlap between Station WQAD318 and NSTN's proposed operations. It asserts that there is overlap neither in fact nor under the standard set forth in Section 90.187(b)(2) of the Commission's Rules,¹¹ which NSTN contends governs the instant matter rather than TSB-88.¹² NSTN also argues that the *Order* is not in the public interest because it conflicts with the Commission's policy to encourage transition from 25 kHz to 12.5 kHz operation.¹³

4. NSTN also argues that El Segundo's license for Station WQAD318 must be cancelled due to non-construction or discontinuance of operation,¹⁴ and now offers documentation in support of its allegations.¹⁵ Because the Petition and the Request for Enforcement Action¹⁶ set forth essentially the same information regarding the construction and operational status of Station WQAD318, we will address both pleadings herein in the interest of administrative efficiency.

5. *Discussion. Spectral overlap and related issues.* We conclude that the *Order* correctly found that there is spectral overlap from NSTN's proposed operations on 12.5 kHz offset channels (with an occupied bandwidths of 11.25 kHz) on center frequencies 12.5 kHz removed from El Segundo's 25 kHz

⁷ See Filing Freeze to Be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, Land Mobile Communications Council (LMCC), to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). The LMCC Consensus was submitted by the LMCC in response to the Commission's direction that the private land mobile radio service coordinators reach a consensus on the applicable coordination procedures for the 12.5 kHz offset channels in the 470-512 MHz frequency band. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

⁸ See *Order*, 22 FCC Rcd at 11539 ¶ 3. The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. See LMCC Consensus, Attachment at 2.

⁹ See *Order*, 22 FCC Rcd at 11539 ¶ 4.

¹⁰ El Segundo filed an opposition on August 1, 2007 (Opposition). NSTN filed a reply on August 10, 2007 (Reply). El Segundo filed a response to NSTN's reply on October 2, 2007 (Surreply). (Because the Reply raised new factual issues regarding the Opposition, we grant El Segundo's request for leave to file the Surreply.) Mobile Relay Associates and Raycom filed "Comments in Support of the Response of El Segundo" (MRA Comments) on October 4, 2007.

¹¹ 47 C.F.R. § 90.187(b)(2).

¹² See Petition at 2-8.

¹³ See *id.* at 8-11.

¹⁴ See 47 C.F.R. §§ 90.155, 90.157.

¹⁵ See Petition at 11-14.

¹⁶ See Request for Enforcement Action at 1-2.

channels (with an occupied bandwidth of 20 kHz).¹⁷ NSTN asserts that there is no spectral overlap because 12.5 kHz and 25 kHz channels do not actually occupy, respectively, 11.25 kHz and 20 kHz.¹⁸ Rather, according to NSTN, 12.5 kHz channel stations and 25 kHz channel stations modulate approximately plus or minus 2.5 kHz and 5 kHz, respectively, from the center frequency, and beyond that range the applicable emission mask “requires the transmitter to roll off the modulation so that the power level is severely attenuated, and is not usable nor necessary for communications.”¹⁹ NSTN is incorrect. The necessary bandwidth is reflected in the emission mask,²⁰ rather than in some smaller number for which NSTN provides no support or authority.

6. NSTN also argues that its proposed operations should not be deemed to overlap El Segundo’s spectrum because Section 90.187(b)(2) affords protection only to stations with center frequencies 7.5 kHz or less removed from a proposed 12.5 kHz station.²¹ We note, however, that the Section 90.187(b)(2) definition of “affected licensee” expressly relates only to analyzing applications under Section 90.187, which sets forth the standards for determining whether a 150-174 MHz or 421-512 MHz band applicant will be required to monitor the proposed frequency.²² This is a separate requirement from TSB-88, which is used to determine whether an applicant for 12.5 kHz “offset” channels in the 470-512 MHz band will cause impermissible interference. Applications to which both Section 90.187 and TSB-88 apply must satisfy both standards.²³ The *Order* thus correctly concluded that NSTN was required to satisfy the interference protection criteria of TSB-88.

7. NSTN also argues that the *Order* is not in the public interest and conflicts with the Commission’s rules²⁴ requiring 25 kHz private land mobile radio licensees to transition to more efficient equipment by 2013.²⁵ We disagree. While the Commission has mandated migration to more efficient

¹⁷ See, e.g., National Science and Technology Network, Inc., *Order*, 23 FCC Rcd 4096, 4097 ¶ 4 (WTB MD 2007), *recon. pending*; National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 18644, 18646 ¶ 6 (WTB MD 2007) (*NSTN*), *recon. pending*.

¹⁸ See Petition at 3-4.

¹⁹ See *id.* at 3. NSTN asserts that “[t]he FCC and the industry have confused ‘channel spacing’ with ‘occupied bandwidth.’” See *id.* at 3 n.5.

²⁰ See 47 C.F.R. § 2.201(a). Moreover, the necessary bandwidth “is not the only characteristic of an emission to be considered in evaluating the interference that may be caused by that emission.” 47 C.F.R. § 2.202(d).

²¹ See Petition at 2, 6-8.

²² See 47 C.F.R. § 90.187(b)(2). Such monitoring is not required if the applicant has exclusive use of the frequency, or obtains written consent from all “affected licensees,” as defined in Section 90.187. See 47 C.F.R. § 90.187(b)(1), (2).

²³ We thus disagree with El Segundo’s assertion, see Opposition at 4-8, that Section 90.187(b)(2) does not apply to the 470-512 MHz band. See *NSTN*, 22 FCC Rcd at 18647 ¶ 8. We have found TSB-88 to be applicable in numerous cases where the separation between the proposed operations and the incumbent was greater than 7.5 kHz. See, e.g., Pappamal Wellington Kurian, *Order of Modification*, 22 FCC Rcd 20965, 20965-65 ¶¶ 3-4 (WTB MD 2007); *NSTN*, 22 FCC Rcd at 18646 ¶ 6; License Communications Services, Inc., *Order Proposing Modification*, 22 FCC Rcd 17596, 17597 ¶ 7 (WTB MB 2007), *protest pending*; see also University of Southern California, *Order*, 19 FCC Rcd 23155, 23156 ¶ 4 (WTB PSCID 2004) (agreeing with NSTN that an applicant proposing operations on 12.5 kHz offset channels on center frequencies 12.5 kHz removed from the center frequency of NSTN’s 25 kHz channels was required to satisfy TSB-88).

²⁴ See 47 C.F.R. § 90.209(b)(5) n.3; Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034, 3038 ¶ 12 (2003).

²⁵ See Petition at 8-9.

technology, it did not intend to disadvantage the incumbent licensees still operating on 25 kHz channels.²⁶ The narrowbanding mandate is thus not grounds to reduce 25 kHz licensees' privileges prior to the mandatory migration date.²⁷

8. El Segundo Station WQAD318. We are unpersuaded by NSTN's argument that El Segundo's authorization for Station WQAD318's Corona, Glendale, Rolling Hills, and Whittier, California facilities must be cancelled due to non-construction or discontinuance of operation.²⁸ NSTN proffers correspondence²⁹ from the manager of the Corona site to demonstrate that the facility was deconstructed when the Los Angeles County Metropolitan Transportation Authority (LACMTA) assigned the authorizations to El Segundo pursuant to a partial assignment of LACMTA's license for Station KUP236.³⁰ NSTN asserts, without evidentiary support, that LACMTA also deconstructed the Glendale, Rolling Hills, and Whittier sites at that time.³¹ In response, El Segundo states that the Corona, Glendale, Rolling Hills, and Whittier sites were reconstructed after the authorizations were assigned,³² and submits supporting declarations from the site operators.³³ After NSTN questioned why El Segundo did not provide lease documents, invoices for site rental, or canceled checks, which "would have . . . ma[d]e their case ironclad,"³⁴ El Segundo submitted invoices and canceled checks.³⁵ We conclude that the documents

²⁶ In fact, to allow such incumbent licensees increased flexibility in their migration, the Commission extended the deadline for the acceptance of new applications for new operations using 25 kHz channels, and for modification of operations that expand the authorized contour of such stations, from January 13, 2004 to January 1, 2011. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045, 25046 ¶ 2 (2004).

²⁷ *See* Association of American Railroads, *Order*, 22 FCC Rcd 1304, 1308-09 ¶ 9 (WTB MD 2007) (denying request for waiver that would grant railroads exclusive access to spectrum shared with other industries in order to facilitate the railroads' transition to 12.5 kHz operations).

²⁸ *See* Petition at 12-14. The Petition does not challenge the construction or operational status of Station WQAD318's Malibu facility. *See id.* at 13; Reply at 3 n.2. *But see* Second Status Report at 4 (requesting an inquiry regarding the facility).

²⁹ *See* Petition at Exhibit E (Electronic mail message dated July 13, 2007 from Barry Permenter, Orange County Sheriff's Department/Real Property Services, to Alan Lurya). El Segundo objects to the consideration of this evidence on reconsideration because it was not presented earlier in the proceeding. *See* Opposition at 10 (citing 47 C.F.R. § 1.106(c)). We agree with NSTN, *see* Reply at 5, that the correspondence may be considered because NSTN could not obtain the information sooner. *See* 47 C.F.R. § 1.106(b)(2)(ii), (c)(1). We also note that, regardless of whether the correspondence is admissible in connection with the Petition, it may be considered in connection with the Request for Enforcement Action.

³⁰ *See* FCC File Nos. 0001613534 (filed Feb. 19, 2004) (assignment application), 0001727015 (filed May 6, 2004) (consummation notification).

³¹ *See* Petition at 13-14.

³² *See* Opposition at 10-11. El Segundo explains that it did not file construction notifications when it reconstructed the sites because the Commission does not require assignees to file construction notifications for facilities for which the assignor had filed notifications. *See id.*

³³ *See* Opposition at Exhibits A (Letter dated July 27, 2007 from James A. Kay, Jr., Lucky's Two Way Radios, to Federal Communications Commission, stating that the Corona site has been operational since March 2005) and B (Letter dated July 30, 2007 from Mark J. Abrams, Mobile Relay Associates, to Federal Communications Commission, stating that the Glendale, Rolling Hills, and Whittier sites have been operational since April 2005).

³⁴ *See* Reply at 3, 4.

³⁵ *See* Surreply at Exhibits 2-5. While the invoices and canceled checks do not specifically refer to El Segundo, MRA confirms that they relate to the instant matter. *See* MRA Comments at 2-3. We disagree with NSTN's

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provided by El Segundo adequately refute NSTN's allegations regarding the construction and operation of Station WQAD318's facilities.

9. NSTN also requested that the Enforcement Bureau monitor and inspect the facilities of Station WQAD318.³⁶ The Enforcement Bureau's field office in Los Angeles has conducted periodic monitoring of Station WQAD318, and heard communication activity between dispatchers and police officers.

10. In summary, the *Order* correctly found that NSTN was required to satisfy the interference protection criteria of TSB-88 because there is spectral overlap between its proposed operations and El Segundo's licensed operations. We also conclude that NSTN has not demonstrated that El Segundo's license for Station WQAD318 has terminated for failure to construct or discontinuance of operation. Consequently, we deny the Petition and the Request for Enforcement Action.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Partial Reconsideration submitted by National Science and Technology Network, Inc. on July 19, 2007 IS DENIED.

12. IT IS FURTHER ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Request for Enforcement Action and License Modification for WQAD318, City of El Segundo, Due to Non-Construction and Non-Operation filed by National Science and Technology Network, Inc. on July 24, 2007 IS DENIED.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
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suggestions that because they are not official documents of the city, were not in the El Segundo's possession, and do not list it as a party, the documents are insufficient to demonstrate that the facilities were constructed. *See* First Status Report at 3; Second Status Report at 2-4. Any purported conflict with El Segundo's Municipal Code or other applicable procedures for entering into contractual relationships, disbursement of the municipal funds, and recordkeeping is irrelevant to the question of whether the facilities are constructed and operational. Nor do we believe that the "irregularities" in the documents identified by NSTN discredit their authenticity. *See* First Status Report at 3-4. For example, the fact that the deposit stamp on one of the checks lists "Downey National Bank," which ceased doing business under that name in 1999, only means that the depositor continued to use its previously issued endorsement stamp after the name change.

³⁶ *See* Request for Enforcement Action at 2; Reply at 3.